

REMARKS

This amendment is submitted in response to the Official Action mailed November 10, 2005. Claims 10-18, 25, 26, 38, 45, and 51 are pending. Claims 11, 14, 25, and 51 are amended to more particularly point out and distinctly claim the invention. In particular, claim 11 is amended to add "high lauric acid soy oil," which is disclosed at page 3, lines 23-25 of the originally-filed application. In view of the above claim amendments and the following remarks, reconsideration by the Examiner and allowance of the application is respectfully requested.

Turning to the Official Action, Claims 14 and 51 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 10-12, 18, 38, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohzeki et al. (U.S. Patent No. 4,569,846) in view of Isaacs et al. (U.S. Patent No. 5,434,182). Claims 15-17, 25, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Windholz et al., The Merck Index, Tenth Edition, 1983, page 893, abstract no. 6100, in view of Isaacs et al.

With respect to the rejection under 35 U.S.C. § 112, second paragraph, this rejection is respectfully traversed in view of the following amendments. Claim 14 is amended to read "further comprising at least one antibiotic" instead of "which contains at least one antibiotic" to more particularly define "at least one antibiotic" as a required feature that first appears in Claim 14. Claim 51 is also amended to depend from Claim 26 instead of Claim 10 because Claim 10 does not require the presence of an antibiotic. These amendments do not introduce new matter.

Next, Claims 10-12, 18, 38, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohzeki et al. in view of Isaacs et al. Ohzeki et al. is cited as teaching a composition comprising a crude protein product and an oil mixture containing palm oil and rapeseed oil, which the Examiner considers to be high lauric acid oils. The Office Action notes that Ohzeki et al. does not teach the instant composition is an antibacterial composition. However, the Office Action cites Isaacs et al. as teaching that fatty acids, including lauric acid, possess anti-bacterial activity. This rejection is respectfully traversed for the reasons set forth hereinafter.

Ohzeki, et al. is directed to the preparation of a dairy-type spread or dessert topping that can be squeezed from a tube, in which an aqueous emulsion of non-fat milk solids and/or soybean proteins and fats is subjected to lactic fermentation. However, anti-bacterial quantities of lauric acid, like those disclosed in Isaacs et al., would inhibit fermentation and fail to produce a suitable dessert topping. According to MPEP §2143.01(V), “If [a] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” (Citing In re Gordon, 221 USPQ 1125 (Fed. Cir. 1984)).

Therefore, because modifying Ohzeki et al. to use anti-bacterial quantities of lauric acid inhibits *Lactobacillus* fermentation and renders the Ohzeki et al. compositions unsuitable for their intended purpose, i.e., consumption as a dairy-type spread or dessert topping, there is no suggestion or motivation to combine the teachings of Ohzeki et al. with Isaacs et al. to arrive at the animal feed composition of the present invention, which includes an anti-bacterial amount of an anti-bacterial fatty acid component.

Next, Claims 12, 38, and 45 are rejected under 35 U.S.C. §103(a) as being obvious in view of Ohzeki et al. According to the Examiner, the specific weight percentages recited in these claims are determinations within the level of ordinary skill. This rejection is respectfully traversed for the reasons set forth hereinafter.

This is not a matter of routine optimization. Ohzeki et al. disclose compositions containing lauric acid that readily undergo *Lactobacillus* fermentation. This will not occur within the anti-bacterial weight percentages of claims 12, 38, and 45. As noted above, Ohzeki et al. desire bacterial growth, and teach against the use of anti-bacterial quantities of lauric acid. Modifying Ohzeki et al. to use anti-bacterial quantities of lauric acid inhibits *Lactobacillus* fermentation and renders the Ohzeki et al. compositions unsuitable for consumption as a dairy-type spread or dessert topping. Therefore, under MPEP §2143.01(V), one of ordinary skill in the art would not be motivated to adjust the quantities of lauric acid in Ohzeki et al. to anti-bacterial amounts. Reconsideration by the Examiner and withdrawal of this rejection is therefore also respectfully requested.

Finally, Claims 15-17, 25, and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Windholz et al. in view of Isaacs et al. Windholz et al. is cited as teaching that monesin is a well-known antibiotic used in the animal feed of chickens. The Office Action further states that the instant invention differs from Windholz et al. in that Windholz et al. does not teach the addition of an antibacterial fatty acid as set forth in Claims 25 and 26. Isaacs et al. is cited as teaching antibacterial fatty acids.

However, Claims 15-17, 25, and 26 depend from Claim 10, which recites an animal feed composition comprising crude protein and an antibiotic supplement, the improvement comprising replacing all or a portion of said antibiotic supplement with an anti-bacterial amount of an anti-bacterial fatty acid component, wherein the anti-bacterial fatty acid component is a high lauric acid natural oil, or a derivative thereof having a high lauric acid content. According to MPEP §608.01(n) and 37 C.F.R. 1.75(c), "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim." However, neither reference recites the features of Claim 10. Therefore, because neither Windholz et al. nor Isaacs et al. discloses or suggests an animal feed composition comprising crude protein having the features recited in Claims 10, 15-17, 25, and 26 this rejection is respectfully traversed.

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Application No. 09/720,136

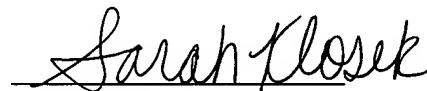
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CONCLUSION

In view of the above claim amendments and the foregoing remarks, this application is believed to be in condition for allowance. Reconsideration is respectfully requested. However, the Examiner is requested to telephone the undersigned if there are any remaining issues in this application to be resolved.

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicant's deposit account number 19-5425 therefor.

Respectfully submitted,



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